

In re ) Fair Hearing No. 20,849  
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Appeal of )

The petitioner appeals the decision of the Department for Children and Families, Office of Vermont Health Access (OVHA) denying his request for a titanium frame wheelchair.<sup>1</sup> The issue is whether the petitioner's request meets the criteria for coverage under the pertinent regulations. The following facts are based on the written record submitted by the parties.

1. The petitioner is a twenty-two-year-old young man who is paraplegic due to injuries sustained in a car accident in 2006. He is unable to walk and has rods fusing his thoracic spine. He also suffered damage to his left wrist.

2. After the accident, following his hospitalization the petitioner underwent extensive rehabilitation at a clinic

1 The petitioner's initial request for a hearing also included a dispute involving coverage for a special carrying pouch to be fitted to the wheelchair. The parties have informed the Board that they have agreed that the petitioner will undergo an occupational therapy evaluation to determine his need for such an item and the availability of any reasonable alternatives. If, after this evaluation, the petitioner still has a grievance, he can file a separate appeal.

in Georgia, during the course of which he developed carpal tunnel syndrome in his injured wrist. He has also developed pain in his upper back.

3. Since returning to Vermont the petitioner has primarily been treated by a physical therapist and an osteopathic physician.

4. Considering the extent of his injuries and the relatively short time that has elapsed since, it appears the petitioner has developed a remarkable degree of mobility and self-reliance. He uses a manual wheelchair and can operate a specially equipped car.

5. His doctor and physical therapist have prescribed a titanium frame ultra-lightweight wheelchair with a scissors frame and flat-free tires. The Department has approved Medicaid coverage for a super-light aluminum wheelchair with the same prescribed frame type and tires. The issue in this case appears to have boiled down to a dispute over the medical necessity for titanium versus an aluminum frame.

6. The most thorough and succinct case for a titanium frame is included in the following letter, received by the Department on June 25, 2007, signed by both the petitioner's doctor and his physical therapist.

As indicated in my earlier letter of February 28, 2007, a titanium frame would be lighter and have better shock absorption, leading to less vibration, than the high aluminum frame approved by OVHA. These two features are important not merely for improved durability of the chair, leading to fewer repairs and longer use for the

chair, and for [petitioner's] comfort but also for minimizing the risk of short term and long term medical complications.

The difference in weight between the two chairs would mean that [petitioner] would experience less fatigue from transfers with the titanium frame. Over time, the lighter frame will reduce the strain on [petitioner's] shoulders and arms and prolong the length of time that he is able to use a manual wheelchair rather than a motorized chair. This in turn, will play a major role in maintaining [petitioner's] overall health and the prevention of various ailments related to inactivity such as cardiovascular disease and diabetes. It will also minimize the possibility of injuries such as a rotator cuff tear or bicipital tendinitis.

The stress of propelling and or lifting (as performed when transferring wheelchair into the car) the heavier chair is greater for [petitioner] than for some other individuals with spinal cord injuries because of his history of a fractured left wrist with carpal tunnel syndrome, as well as his persistent right periscapular pain which is located in the trapezius and rhomboid muscles of his upper back.

The reduction in vibration with the titanium frame is important primarily because it would mean less friction on the buttocks area, and therefore a decreased risk of developing skin breakdown with pressure sores. If these sores did develop, [petitioner] would probably experience reduced mobility for an extended period of weeks to months. Because of the lack of muscles and blood flow, the area would take a long time to heal and would expose [petitioner] to numerous other complications stemming from prolonged immobility and bed rest. In the worst-case scenarios, such wounds may result in fatality, as was the case with Christopher Reeve.

As an added benefit, the reduced vibration of the titanium frame may lead to decreased jostling which can trigger reflexive muscle spasms. In some cases these spasms do not lead to major medical complications, and are merely annoying and distracting. However, [petitioner] reports that the spasms have been severe enough as to cause him to unintentionally tip over his wheelchair on five or six occasions. [Petitioner]

states that one such incident occurred in the school restroom and resulted in his striking the concrete floor.

7. In its rationale approving the aluminum frame chair the Department's consulting physical therapist found that the difference in weight between the two types of chairs is only two pounds. She also found that vibration in an aluminum chair can be significantly lessened with good cushioning and tires, both of which the Department is willing to provide. She also found that vibration from wheelchairs is not a typical source of loss of skin integrity. Despite being given several continuances for this purpose (among other reasons), the petitioner has not submitted any medical evidence or opinion refuting these findings.

8. There does not appear to be any dispute that a titanium frame chair is sturdier and more durable than an aluminum one, and would be the optimal choice for the petitioner if price were no object.<sup>2</sup> However, based on the consideration of the entire record, in addition to the above-cited reports, it is found that the petitioner's medical needs can be more-than-adequately met with an aluminum frame chair of the type, and with the accessories, approved by the Department. Specifically, it cannot be found that the two pound differential and the slightly more vibration that might

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<sup>2</sup> There also appears to be no dispute that the price differential is substantial.

occur in a well-accessoried aluminum chair poses a significant health or safety risk to the petitioner, either immediately or over an extended period of use. It is also found that any difference in weight and vibration would only be significant in its use outside the home—i.e. loading it into a car and traveling over rough surfaces.

ORDER

The decision of the Department is affirmed.

REASONS

W.A.M. § M840.1 defines durable medical equipment as follows:

Durable medical equipment (DME) is defined as equipment that will arrest, alleviate or retard a medical condition and is:

- primarily and customarily used to serve a medical purpose;
- lasting and able to withstand repeated use;
- generally not useful to a person in the absence of illness, injury or disability; and
- suitable for use in the home.

The regulations further provide that "medical necessity" must be documented, and that: "The medical necessity test can be met when the item is necessary to avoid bed or chair confinement." § M840.4. In this case, the Department's decision to provide the petitioner with a super-lightweight aluminum chair with additional padding and special tires

appears to be well in excess of its obligations under the above provisions. Although a titanium chair might be superior, it cannot be concluded that the evidence establishes that the petitioner's condition requires the use of one under any reasonable measure of medical necessity.

Inasmuch as the Department's decision in this matter is found to be in accord with the above regulations the Board is bound by law to affirm it.<sup>3</sup> 3 V.S.A. § 3091(d), Fair Hearing Rule No. 17.

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<sup>3</sup> The regulations also provide that the Department is the owner of all purchased durable medical equipment. W.A.M. § 840.8. An issue in this case arose over the petitioner's willingness, as a "fallback" position, to pay the cost difference for a titanium chair if the Department agreed to purchase one, even if the Department owned it. However, the petitioner must exhaust other potential funding sources for a titanium chair, especially vocational rehabilitation, before putting himself, the Department, and the Board in the position to consider this issue.